IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	Thompson et al.		
Serial No.:	09/703,562	Group No.:	3622
Filed:	11/01/2000	Examiner:	D. Champagne
Entitled:	Methods And Systems For Applying Rebates To Higher Education		

DECLARATION OF LARRY HAUGEN PURSUANT TO 1.132

EFS WEB-FILED
Commisioner for Patents
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I, Larry Haugen, state as follows:

1. In my present position, I serve as a consultant to TuitionFund, LLC in the areas of strategic planning, research and analysis, media promotion, financial systems and other administrative matters. Prior to providing consulting services to TuitionFund, LLC, I was a financial executive with a major television station broadcasting group. Earlier in my career, I was a certified public accountant with Arthur Young & Co., a predecessor company to the accounting firm of Ernst & Young.

2. I have reviewed the Final Office Action dated July 19, 2007.

3. First, Fernadez-Holmann teaches at Column 1, lines 59-63, that systems wherein the merchant offers the rebate are "disadvantageous since particular merchants are required to be associated with the system, and the consumer may only make purchases at those merchants in order to receive the rebate into his account." Second, Fernandez-

Holmann teaches at Column 2, lines 15-21 that "It is still further object of the present invention to provide such a system which gives the consumer automatic rebate-funded payments into his investment account which do not need to be repaid and which are based on purchase of goods or services made by the consumer, **and which is not dependent on merchants or stores becoming members of the particular rebate plan.**" (Emphasis added). Third, Column 3, third full paragraph further reiterates this point, providing: "The vast credit card network already in commercial use **allows the present invention to be implemented without requiring merchants to become members in a separate rebate program, and the invention is thus transparent to the merchants and is managed only by the credit card issuer.**" (Emphasis added). Taken together, I believe these statements in Fernandez-Holmann would discourage a person of skill in the art from implementing a system where the merchant must be registered with the rebate program (i.e., a "registered merchant") as opposed to being a subscriber to a credit card system as urged by Fernandez-Holmann. It is clear to one of skill in the art that the claimed "registered merchants" are not the "subscribers" of Fernandez-Holmann as alleged by the Examiner. The term "subscriber merchants" in the Fernandez-Holmann patent is a misnomer as merchants do not take any proactive step to participate in the rebate program as described in the Fernandez-Holmann patent. The Fernandez-Holmann systems and methods are designed to be automatic for all merchants accepting a particular credit card. In contrast, the present claims encompass systems and methods where particular merchants choose to be part of a rebate plan and register with a Rebate Network Manager, thus becoming a registered merchant, or merchant registered with the rebate through the Rebate Manager as opposed to a mere credit card subscriber.

4. The Examiner argues that Bednarek teaches that the rebate is offered by a registered merchant and that "because this would solve the free rider problem identified by Bednarek (the merchant benefits, but does not pay, col. 16, lines 57-59), it would have been obvious to one of ordinary skill in the art, at the time of the invention, to add the teachings of Bednarek to those of Fernandez-Holmann." The paragraph the Examiner cites to provides the following:

> One problem with the credit card incentives is that savvy users can take advantage of the system by making charges to earn rewards and then consistently paying off their balance in full so that the financial institution does not make any money. In such instances, the customer and merchant both benefit, but the financial institution does not have an incentive for maintaining the program. One solution is to require a merchant to fund the rebate entirely, if this happens, then the merchant might implement a program that makes awards regardless of the form of payment and the financial institution loses a valuable tool for increasing its credit card base. A more elegant solution, according to the present invention, is to implement an incentive program that allows for the discrimination between profitable customers and non-profitable customers that allows **the financial institution to reward** (and thus retain) profitable customers, while minimizing the reward to less profitable customers.

(emphasis added). In contrast to the statements by the Examiner, I believe this paragraph actually indicates to one of skill in the art that if the merchant funds a rebate, there is a risk that the merchant will implement a program that makes rewards regardless of the form of payment and the financial institution loses a tool for increasing its credit card base. As the boldened language in the above paragraph which was taken from Bednarek implies, the financial institution, and not the merchant is providing the reward in Bednarek. Thus, I believe Bednarek discourages one of skill in the art from using systems where the merchant offers the rebate due to the noted problems.

5. I believe the Examiner has also mischaracterized the problem addressed by Bednarek. The Examiner states that the problem identified by Bednarek at col. 16 lines 57-59 is that the merchant benefits but does not pay, and characterizes the problem as a "free rider" problem. This is not accurate. The problem identified is that a credit card user can pay off the balance so that the financial institution does not make money. The merchant paying the rebate is identified as a risk, or additional problem, because the merchant could decide to implement a program regardless of the form of payment. This would discourage a person of skill in the art from implementing a system where the rebate comes from the merchant. I believe, to a person of skill in the art, Bednarek discourages combining the element of merchants offering a rebate with rebate systems such as those described in Fernandez-Holmann because of the risk that the merchants

will, in effect, cut the credit card issuer out of the loop by offering the reward on all forms of payment (i.e., cash, checks, etc. in addition to credit cards).

6. The Examiner further indicates that "higher education accounts" should not be given patentable weight. A higher education account is a tangible asset that is part of the systems and methods described for the following reasons.

7. The retirement saving accounts described in Fernandez-Holmann and the higher education accounts described in the instant applications are independent and distinct as they are different functionally, and their respective uses have different goals. The time horizons for both saving for college education and expending the amounts for college education are generally significantly shorter than the time horizon for saving and expending funds for retirement as taught in Fernandez-Holmann. Parents saving for their children's college education normally have their children entering college while the parents are between the ages of 40 and 55; which is 10-25 years earlier than most of them retire. Second, the parents or individuals generally need a larger portion of their own savings for a college education as employers generally do not subsidize employee's or their children's college education like they do with an employee's future retirement via defined benefit pension plans or 401(k) plans with employer-provided matching contributions. This is in part why the claimed methods and systems allows members to register more than one credit card to participate in the plan and why registered merchants are requested to grant rebates from 1 to 30% so that the claimed program can generate more funds over a shorter period of time for the family's educational needs vs. utilizing just a single card in which the card issuer is offering a rebate of generally between ¼ to 2% as outlined in the Fernandez-Holmann patent. Third, the time horizon in which the funds are utilized are substantially different; college educational expenditures are generally made over a 4 to 6 year period, while disbursement from a tax qualified retirement account (IRA, 401(k), etc.) for a person's retirement are generally made over a minimum of 10 years to the remaining lifetime of the person. Consequently, withdrawals from a higher education account to pay for tuition, fees, books,etc. normally occur in a few "lump sums" when twice per year semester payments are due (or three times per year

for schools on a trimester calendar schedule) while withdrawals from a retirement savings account such as an IRA or 401(k) for retirement generally involve regular reoccurring (e.g. monthly) withdrawals of substantially smaller amounts over a substantially longer period of time.

Moreover, given the high cost of a college education, a number of families and/or students often incur student loans obligations to complete their education. According to the National Center for Education Statistics, a division of the U.S. Dept. of Education, at least 65% of students or their families borrow funds for college education. Experian, a credit ratings company, estimated that the average outstanding student loan balance for 2006 college graduates with student loans was $14,379. Also, student loan debt generally cannot be eliminated via a personal bankruptcy. Therefore, a component of the claimed methods and systems is the ability to apply rebates to student loan obligation accounts. The Fernandez-Holmann patent makes no reference to rebates being used to pay off student loan obligations. Also, given the high cost of a college education, many of registered members or their families will likely be saving the rebates prior to the student entering college in tax advantaged Coverdell ESA's (Educational Savings Accounts) or QTP's (Qualified Tuition Programs and also commonly referred to as 529 plans) and upon graduation they will be utilizing their rebates earned to pay off student loan obligations. That is why, in part, the claimed methods and systems provides for both tax-qualified education savings accounts and student loan payment accounts.

Finally, funding college education from traditional retirement accounts (eg. IRA's and 401(k)'s) has significant adverse tax consequences relative to funding college education with tax-qualified QTP's and Coverdell ESA's (Educational IRAs) as claimed. Contributions to QTP's and Coverdell ESA's earn income and dividends tax-free as do IRA's and 401(k)'s. However, QTP's and Coverdell ESA's benefit from a significant distinction in that distributions from QTP's and Coverdell ESA's to pay qualified education expenses are tax-free while distributions from IRA's and 401(k)'s to pay qualified education expenses are subject to ordinary income tax (in which the federal marginal tax rates can be as high as 35% plus state income taxes). Also, withdrawals from an IRA or a 401(k) to pay college expenses may subject all or a portion of such withdrawal to an additional 10% early withdrawal penalty. The 10% early withdrawal

penalty for IRA's and 401(k)'s is calculated by first calculating what the IRS defines as "qualified education expenses" which generally encompasses tuition, fees, books and supplies along with room and board if the student is at least a half-time student. Then distributions from Coverdell ESA's and tax-free scholarships are subtracted from "qualified education expenses" to arrive at "adjusted qualified education expenses." If the amount withdrawn from an IRA or 401(k) exceeds the "adjusted qualified education expense" amount, the amount of such excess amount would be subject to the 10% early withdrawal penalty. Often a person withdrawing funds from their IRA or 401(k) has to withdraw more than the amount needed to fund the "adjusted qualified education expense" amount since they must withdraw amounts to pay the ordinary income tax on the withdrawal, thereby subjecting at least a portion of the IRA or 401(k) withdrawal also to the additional 10% early withdrawal penalty. Therefore, educational IRAs as currently claimed not only benefit generally from tax-free withdrawals when used to pay qualified education expenses, they also are applied before IRA or 401(k) withdrawals in determining whether the IRA or 401(k) withdrawal is subject to the 10% early withdrawal penalty. Therefore, funding college education via retirement accounts such as traditional IRA's and 401(k)'s has significant adverse tax consequences to the individual relative to the type of accounts proposed in the current claims. These facts serve to underline the differences between higher education accounts of the instant application and traditional retirement accounts such as those described in Fernandez-Holmann.

8. I further declare that all statement made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under section 1001 of title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Larry Haugen

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Date: September 14, 2007